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Submissions

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## **SUBMISSION ON TRANSPARENCY GUIDELINES**

- 1 Orion New Zealand Limited (**Orion**) welcomes the opportunity to comment on the “Improving transparency of consumers’ electricity charges – [draft] Guidelines for communications about price changes” (the **guidelines**) and the companion “Decisions and reasons” paper (the **paper**) released by the Electricity Authority (Authority) in February 2015. Our submission also draws on the discussion at the workshop hosted by the Authority on 10 February 2015.
- 2 The Electricity Networks Association (ENA) has also submitted on the guidelines. Orion endorses the ENA submission.
- 3 We are happy to discuss our submission and the more general topic of transparency with the Authority.

### **Summary and recommendations**

- 4 In summary:
  - we support sharing of information between participants, although we are not sure that all controversy can be or should be eliminated,
  - we do not believe the paper establishes the case for the guidelines, particularly in the form proposed,
  - we consider that the guidelines are both too detailed and too prescriptive, and are being developed in too short a timeframe, and
  - we are disappointed that the Authority has decided that it does not have a significant role to play in explaining price movements, but we are encouraged that it is contemplating more work in this area.
- 5 We recommend that:
  - should the Authority proceed with a guidelines approach, that these focus more on principles than on detailed prescription,
  - more time be allowed to develop any guidelines,

- any monitoring should focus on how participants have aligned with the principles rather than the detail, and
- highlighting good or best practice might be a more productive approach to monitoring than naming and shaming.

### **Our comments**

6 We have comments in two broad areas:

- the rationale for, and timing and structure of the guidelines, and the link to the decisions and reasons in the paper,
- the detail of the guidelines.

### **Rationale**

7 Orion fully supports the Authority's decision not to proceed with its original proposal as set out in its June 2014 consultation paper.

8 We are also comfortable in principle with the approach of developing guidelines to help manage any actual problems. However, we are not supportive of the process by which the guidelines have been developed, and in particular the speed with which the Authority is moving to implement them. We think that the right response, having concluded that the June 2014 proposal should not proceed, was for the Authority to indicate that and explain why it prefers a more light-handed approach of guidelines, and that it would work with stakeholders to develop these. Instead the Authority appears to have drafted the guidelines in isolation.

9 The paper does not explain how the expectations set out in section 2.3 will be met by the guidelines. We are doubtful that any will be in a material way.

10 The paper restates the problem definition in section 3.2, but this does not in our view establish that the problems are real or material.

11 Para 3.2.5 of the paper says that some submitters "misinterpreted" the June 2014 paper as taking the view that transparency assisted switching decisions, a position which a number of those submitters then disagreed with. But the paper restates the problem definition "in simple form", in paras 3.2.1 to 3.2.3, with para 3.2.2 (c) stating:

*for electricity, transparency primarily relates to whether consumers have timely access to enough information for them to...**make choices about their retailers...***  
[Emphasis added.]

12 We may have misinterpreted this again, but:

- this looks like the paper sees (poor) customer switching decisions as part of the problem caused by lack of transparency,
- we still see no link between transparency and consumers having the right information to making good choices about their preferred retailer.

- 13 Regarding media statements, we appreciate that some participant's comments on the actions or statements of others may cast the industry in an unfavourable light, and we support the sharing of information between retailers and distributors. However, in our view care needs to be taken that the guidelines do not lead to the industry being perceived as trying to conceal - possibly legitimate - disagreement amongst participants, or even worse that they do in fact conceal it. According to the Authority's objective, all participants are being regulated for the long term benefit of consumers, not participants. We observe robust public discussion amongst participants in other markets, and we consider that this is part and parcel of the competitive process. There is a risk that the guidelines lead to no participant saying much at all, with consumers being less well-informed as a result.

### **Timing**

- 14 There is no way the guidelines once published can be applied by all participants for the 1 April 2015 distributor price change round that has already been implemented, as distributors have already completed their communications, and those retailers that are changing their prices in response on or around the same date will be well advanced in their planning. There is thus no compelling reason for the Authority to have proceeded with such haste to develop guidelines that cannot be applied comprehensively this year. At the workshop the Authority indicated that its monitoring this year will reflect this timing issue by focussing on media statements, and in particular on any made after the guidelines come into effect. But the number of such statements is likely to be few, and this therefore seems like a weak basis on which to risk developing guidelines in a rushed fashion.
- 15 Likewise there is no obvious reason to limit the feedback period to just two weeks, or indeed why there would only be one feedback round. We acknowledge that sometimes regulatory changes need to be made quite quickly, but we do not think that is the case here.

### **Structure of the guidelines**

- 16 The suggestion was made at the workshop that the draft guidelines perhaps emphasise the detail of the guideline ahead of the purpose, when the purpose is actually the most important aspect. We agree with that suggestion. However, we still take the view that the guidelines themselves could be clearer. Taking a leaf out of another guideline-based regulation (distribution pricing) would suggest that examples of best practice could be developed over time.
- 17 Perhaps consideration could be given to including aspects of the guidelines, if there must be guidelines, in the model domestic contract instead?

### **Distributor pricing that is “not easily billable”**

- 18 One of the expressed purposes of the guidelines, and two of the actual guidelines, relate to “concerns that distributors' tariffs may not be in a form that is easily billable.” We presume this refers to pricing such as that of Orion where the retailer has a number of options about how they recover our charges to them. Typically, at least for mass market consumers, retailers use models to translate our pricing into more familiar retail pricing plans like 'Inclusive', 'Day/Night', 'Peak/Shoulder/Off-peak' etc. Although we do not know the detail, we understand that retailers each have different models which reflect things like customer mix, the range of pricing plans they offer

and their approach to profiling. This process of deriving modelled prices is often referred to as ‘rebundling’. For larger customers retailers seem to mostly use a more direct form of ‘pass-through’ billing. Either way the resulting retail prices are clearly “billable”, but we cannot say how “easily” this is achieved by the retailers. We spend quite a bit of time with entrant and existing retailers explaining how we price and the ways that they might go about modelling our pricing, but in the end retailers need to decide on an approach.

- 19 In the light of that, we are unsure how the guidelines as currently written address the concerns. The first guideline in this section states:

*Distributors should provide retailers with the information the distributors would ordinarily provide to their own customers if the distributor was billing the customers directly.*

- 20 Since we don’t “ordinarily” bill mass market customers this is very much a hypothetical question, and we can think of a number of possible answers. In terms of narrative, we provide retailers with a considerable amount of information that seeks to explain how we have derived our prices, and how we apply them. However, this information is tailored to retailers as informed and well-resourced participants. We have no problem with consumers reading this material (it is publicly available) but most of it is not intended for them.<sup>1</sup> However, none of this information constitutes the sort of consumer specific price change notification that the guideline might be getting at.<sup>2</sup> If that is what is meant, then we place on the record that we cannot align with the guidelines, as we do not know the modelling approach that each retailer takes.

- 21 The second guideline in this section states:

*Distributors should include eligibility criteria for each tariff on their schedule of charges, to show how each tariff links with a register content code.*

- 22 We consider it is reasonable to expect all distributors (not just those whose pricing is “not...easily billable”) to present clear eligibility criteria for their various connection categories and price components. We believe that we do. However, the nature of our pricing is that any links between the ‘rebundled’ prices modelled by retailers and features of the metering and load control at a connection (such as register content and period of availability) must be developed by the retailer. We simply cannot do this for them, and we cannot do it instead of them because they make the business rules.

- 23 It is true that it is quite possible that retailers’ models will produce different rebundled prices, so that, were a consumer to compare retailers’ ‘network’ prices for what appears to be the same type of connection and pricing plan, they might be different. But this difference is irrelevant as consumer choice (for most consumers) is based on the total amount they will pay: they cannot pay one retailer for delivery and another for ‘energy’. Retailers’ costs may well vary across the full range of inputs (things like

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<sup>1</sup> We did, up until the 2011 earthquakes, produce an annually updated plain English pricing guide, and we are in the process of updating this for the first time since the earthquakes.

<sup>2</sup> For our directly contracted customers (which are all large) we provide considerable detail on how quantities, prices and charges change. However we are not in position to do this for most consumers.

energy costs, metering, billing etc), but that is not relevant either. Moreover the differences in rebundled network prices might reflect real differences in retailer IP around such things as consumer segmentation, profiles and reconciliation. It would be a pity if transparency resulted in the loss of any such IP, with longer term adverse impacts on competition and innovation.

- 24 In any case the idea that retailers just ‘pass through’ distributors’ prices, even where those prices are “easily billable” is at best a finesse. The following factors make the retailers’ ‘network’ costs apparently or actually different from the prices that the distributor charges them, and different between retailers:
- Some retailers quote prices GST inclusive, others exclusive.
  - In grossing up distributor prices for prompt payment discount, retailers inevitably charge consumers who do not pay by the due date, but do pay, considerably (most discounts are at least 10%) more than they are charged by the distributor.
  - Some retailers offer non-standard or additional discounts, even though the published network price is the same. The effective price clearly cannot be the same.
  - At least one retailer has materially different prompt payment discounts depending on how customers choose to pay and otherwise interact. We understand it applies a weighted average discount in grossing up network prices. This means that all customers that pay by the due date will pay the retailer more or less than what the distributor charges the retailer.
  - Offsetting the points about discounts, retailers take consumer credit risk: they will not fully recover from a consumer that does not pay them what the distributor charges the retailer.
  - Distributors typically apply fixed charges to all ICPs that are energised according to the Registry, but most ICPs will have periods where they are vacant (there is no consumer to bill) but energised: the retailer will again pay the distributor more than they recover from the customer.
  - Likewise there is sometimes consumption at vacant properties, which the retailer will normally pay the distributor for but have no consumer to charge.
  - Finally, some retailers offer fixed rate/fixed term plans for the total price that consumers will pay and the terms can extend over one or more distributor price changes. The retailer will have to make some sort of forecast of future network price changes in establishing the fixed rate, and this forecast may use information provided by the distributor. But only by chance will the forecast and actual network prices align, and they could be very different.
- 25 There is nothing right or wrong about any of this; it is just the reality of retailing. All of these factors are reflected in retailers’ total prices and margins, but ‘transparency’, at least in the way it is conceived in the guidelines, assumes that the boundary is much more clear-cut than it actually is. We hasten to add that we are not in any way advocating that more detail is required – exactly the opposite.

- 26 While these factors mean that the network prices quoted by retailers will not match their costs, they are unlikely to lead to retailer communication of **price changes** to consumers being misleading, particularly if expressed in terms of percentages. But that is also true where the retailer has to apply models to estimate “billable” network prices: unless the model changes, the estimated movements should be reasonable, as should any associated explanations.

### **Other detail of the guidelines**

- 27 Para 1.1.2 of the guidelines states that they set “out the Authority’s expectations of retailers and distributors when they communicate price changes to consumers.” We consider that this is not sufficiently clear.
- 28 Where a retailer is ‘interposed’ between the distributor and the consumer (by far the most common arrangement) we presume the trigger for application of the guidelines is a price change notification by the retailer to the consumer, whatever the drivers of that change are. If a distributor price change is one of the triggers, then the retailer would have access to the information provided by the distributor to the retailer under the guidelines, but the trigger for that is the distributor’s price change notification to interposed retailers, not the retailer’s notification to consumers. Even where price changes have the same effective date, notifications will not normally occur at the same time (distributor notifications are normally well in advance of retailer notifications). It remains unclear to us what a retailer is supposed to do under the guidelines where they do not change their retail (total including network) prices, but a distributors prices have changed.
- 29 Retailers appear to us to have a variety of approaches and business models. Some treat network charges as a “pass-through” and implement retail price changes at the same time. Others separate network related price changes and “energy” related price changes. Still others stagger price changes that encompass both “energy” and network price changes across the year. In addition a number of retailers make fixed price offers (where the price being fixed encompasses all input costs) that at least in some cases overlap distributor price changes, and which must in some cases assume a network price change the details of which are unknown. But whatever approach retailers take does not change the fact that they are not normally invoicing on behalf of distributors, or, in terms of agreements between retailers and distributors, “passing through” distributor’s charges.
- 30 On the other hand, where a distributor contracts directly with a consumer, then the guidelines suggest that the distributor should act as if it is a retailer in that case with respect to delivery price notifications.<sup>3</sup> This could be made clearer. In these situations the retailer has, or should have, no (or very different) obligations under the guidelines.
- 31 As was pointed out at the workshop, the very notions of ‘distribution’ and ‘transmission’ as set out in the guidelines are not as straightforward as might be hoped. Historically a number of distributors (including Orion) have quoted separate distribution and transmission prices, but aspects of the price control regime make this

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<sup>3</sup> There is one distributor that contracts directly with all consumers, but most contract directly with some. Orion contracts directly with around a dozen.

problematic.<sup>4</sup> More recent changes introduce the notions of “pass-through” costs (such as rates and Authority levies) and “recoverable costs” (primarily but not solely transmission related costs) with an implication that these might be separately priced by distributors. The draft guidelines risk locking in a conception of the regulatory regime that is already somewhat out of date.

32 In the appendix we set out further comments on the detail as set out in Table 1 of the draft guidelines. Consistent with our comments above and with suggestions at the workshop we have put the “purpose” in the first column.

33 A minor point: it would be helpful if the guidelines were numbered.

### **Monitoring**

34 The guidelines state that the Authority will monitor consistency with the guidelines. This includes the idea that participants could be named and shamed. We have two concerns about this:

- First, the implication that such an approach could apply “initially”. In our view it is quite an extreme step to name and shame participants, particularly with respect to guidelines which are inevitably open to interpretation. In our view naming and shaming is at the extreme end of possible Authority responses, and if it is done at all it should follow at least some due process of enquiry and discussion with the alleged offender.
- Second, we believe a more positive approach should be taken which emphasises best or good practice rather than bad.

35 We note in this regard Castalia’s 2013 reports on distributor pricing methodologies which emphasised that principles and guidelines require some interpretation. Perhaps a similar approach could be taken to monitoring of transparency?

### **Other options**

36 We are disappointed that the Authority has decided not to produce an annual report on price trends (para 3.6.8 of the paper). We note the paper does not explain this decision. On the other hand we are encouraged that the Authority is considering more analysis in this area (para 3.6.9).

37 We remain of the view that to form an accurate view of price movements and cost drivers across the electricity supply chain requires a level of analytic resource that is beyond most consumers.

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<sup>4</sup> For example, where a distributor acquires so-called “spur assets” from Transpower.

**Concluding remarks**

- 38 Thank you for the opportunity to make this submission. Orion does not consider that any part of this submission is confidential. If you have any questions please contact Bruce Rogers (Pricing Manager), DDI 03 363 9870, email [bruce.rogers@oriongroup.co.nz](mailto:bruce.rogers@oriongroup.co.nz).

Yours sincerely

A handwritten signature in black ink, appearing to be 'BR', written in a cursive style.

Bruce Rogers  
**Pricing Manager**

## Appendix – detailed comments on guidelines

Stated purpose	Proposed guideline	Orion comment
<b>Accurate and timely info</b>		
<p><i>To ensure consumers receive accurate and timely information about the source of price changes, for example:</i></p> <ul style="list-style-type: none"> <li>• <i>competitive versus non-competitive components</i></li> <li>• <i>changes to distribution tariff structures.</i></li> </ul>	<p>Retailers should calculate tariff breakdowns for each consumer grouping (showing retail, distribution and transmission components).</p>	<p>“for each consumer grouping”? Is this the retailer’s grouping or the distributor’s grouping? Is it a tariff (ie price) breakdown or an average charge breakdown (like QSDEP)?</p> <p>This will be a material overhead for retailers as they will need to accommodate the distribution / transmission split and most currently don’t. Moreover, the distribution / transmission split is itself becoming less clear. We note that as normally conceived both distribution and transmission are together conceived of as “non-competitive”.</p> <p>A retailer may not supply customers in all of a distributor’s connection categories.</p> <p>Whether or not there is a change in structure it will be very difficult for a consumer to work out what applies to them without consumer specific information.</p> <p>It is not clear to us how even very accurate breakdowns that showed new and old prices and calculated movements would necessarily identify the source of changes and they do not <i>explain</i> anything.</p>
	<p>Retailers should post the tariff breakdowns on their websites (and provide a link in any letters about price changes they send electronically).</p>	<p>This is a relatively trivial requirement once the calculations are done.</p>
	<p>Retailers should put sample bills on their websites and draw consumers’ attention to them when consumers are considering switching to the retailer.</p>	<p>This doesn’t seem well related to the previous two guidelines: bills may or may not show such breakdowns, and consumer groupings inevitably cover a wide range of individual customer plans and circumstances.</p> <p>Not all retailers bill in the normal sense: for example Powershop and Globug.</p> <p>We cannot see why provision (or not) of this sort of information is not simply left to individual retailers operating in a competitive</p>

Stated purpose	Proposed guideline	Orion comment
		environment to decide.
<i>To address concerns that distributors' tariffs may not be in a form that is easily billable.</i>	Distributors should provide retailers with the information the distributors would ordinarily provide to their own customers if the distributor was billing the customers directly.	<p>This strikes us as an odd requirement. Does it mean words or data? We are not sure what we'd do, but more generally it could be a range of things including an estimate of impact at consumer level. We don't have the data to do this, and in any case it is by definition inconsistent with distributor pricing that isn't easily billable, which is the stated purpose?</p> <p>If, rather, it means some sort of narrative, then we already do this, extensively, via our various pricing documents. (We have shared some of these with the Authority and they are published on our website.)</p>
	Distributors should include eligibility criteria for each tariff on their schedule of charges, to show how each tariff links with a register content code.	<p>These are two different things. Eligibility is about connection category at one level, and at that level we can comply. But with our pricing retailers need to establish eligibility at pricing plan and meter/register level, and this will include register content, but it is not sufficient. We cannot meaningfully map our pricing to meter level information such as register content.</p> <p>More generally, only prices that relate to metered kWh consumption have a direct relationship to register content. In addition, we presume the guideline should refer to 'period of availability' as well?</p>
<b><i>Meaningful and accessible information</i></b>		
<i>To ensure consumers have access to meaningful information about price changes.</i>	Retailers should invite consumers to contact them if the consumer wants additional information about price changes, such as the impact of price changes on monthly and annual bills.	<p>We suspect most if not all retailers already do. In fact some already communicate price changes in this way. But is a guideline required? We can imagine low-cost retailer business models that do not do these things. We cannot say whether such a proposition would find favour with any customers, but it might. This guideline rules it out.</p> <p>While we agree with seeing retailers as the front line with regards to pricing information, we are happy to take enquiries about our pricing and pricing changes, be it from retailers or consumers, even though we are not in a position to calculate consumer specific impacts or explain what retailers have done. We do not expect retailers to be able to provide across 28 distributors (and who knows how many</p>

Stated purpose	Proposed guideline	Orion comment
		<p>embedded networks) the level of detail that we individually provide to them. We are comfortable with retailers referring consumers to us, for example by providing links to our website.</p>
<p><i>To show the extent to which changes in distribution prices (for example, as a result of the Commerce Commission's price-quality regulatory regime) are passed on to consumers.</i></p>	<p>Retailers should advise consumers, at an aggregate level for each network, how much the retailer's distribution charges have changed, and the extent to which this is passed through to consumers.</p>	<p>This creates a potential mismatch and considerable scope for confusion. Distributors comply with the price path on a weighted average price basis, and it's only if the retailer has a representative sample that the numbers will necessarily align. A difference does not necessarily indicate non pass-through. In particular a retailer's passed-through increases could be more or less than the regulated movement.</p> <p>There is not normally (for mass market consumers) a contractual obligation on the retailer to pass on changes in network prices. The guideline appears to be creating an expectation that is not aligned with the contractual arrangements.</p> <p>We do not think this is a workable guideline.</p> <p>By mentioning only the distribution component it is left unclear what the retailer is supposed to say about transmission movements or movements in other costs?</p>
<p><b>Consistency of statements</b></p>		
<p><i>To ensure statements from industry spokespeople to consumers and media are consistent.</i></p>	<p>Any participant that comments publicly on another's pricing announcements should use the same calculation methodology as that other participant.</p>	<p>We think it is most important that any statements are true and informative, with consistency second order, and automatically achieved by the first two attributes.</p> <p>As established last year, using the same methodology does not guarantee consistency in any case.</p> <p>How will each party know what methodology was used? What if another's is a methodology that, intentionally or otherwise, is wrong or misleading? What if, for example, two retailers make pronouncements using different methodologies? Does the distributor have to use both, and thereby potentially contradict itself?</p>
	<p>Participants should not encourage third parties to make comments that would be likely to mislead</p>	<p>We are not sure who the third parties are, but we doubt that they need any encouragement.</p>

Stated purpose	Proposed guideline	Orion comment
	consumers.	
	If retailers intend to refer to changes in transmission and distribution charges (or any aspect of transmission and distribution) in their letters to customers or in their media statements, they should notify all relevant distributors of what they intend to say at least three days before saying it. The notifications to distributors should include robust information about the calculations that underpin the figures stated.	What is expected to happen if a distributor disagrees? Should this be reciprocal: distributors should notify retailers? At the workshop the Authority staff indicated this applied to all media statements not just media releases. How, practically, does this work if for example a journalist contacts a participant with questions?
<i>To ensure the Authority is able to monitor price change notifications and media statements.</i>	Any participant that comments publicly on another’s pricing announcements should provide a copy of the media statement to the Authority within three business days.	Not all comments are media releases. For example if a journalist asks one CEO about another CEO’s announcement, is the first CEO supposed to notify the Authority of what they said? The story may or may not be reported, or reported accurately?
	Any participant that advises consumers of price changes should provide an example of its price change notification for each consumer grouping to the Authority within five business days.	To be clear, we presume this only applies to distributors that directly notify consumers of price changes? And is it intended to apply to, for example, Orion’s notifications to its directly contracted large customers?